

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**NIKOLAY RASTORGUEV**

**Plaintiff,**

**V.**

**DAVID SEPIACHVILI,  
DAVID A. SEPIASHVILI,  
ATERRA EXPLORATION, LLC,  
SOUTHTEX ENERGY CORP.,  
LEVEL ONE ADVISORS, INC., and  
TIGHT ROCK COMPANY, LLC,**

## Defendants.

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**Civil Action No. 5:18-CV-00966-FB**

**DEFENDANTS' NOTICE OF WITHDRAWAL OF THEIR PENDING MOTION  
TO DISMISS COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION**

Defendants David Sepiachvili, David A. Sepiashvili, Aterra Explorations, LLC, SouthTex Energy Corp., Level One Advisors, Inc., and Tight Rock Company, LLC file this notice to withdraw their pending Motion to Dismiss Complaint for Lack of Subject Matter Jurisdiction (the “Motion”), and to inform the Court thereof. Defendants endeavored to file the Motion on October 10, 2018 (Dkt. No. 8). Defendants received a filing deficiency notice, and made a corrective filing of the Motion on October 15, 2018 (Dkt. No. 10). Plaintiff does not oppose Defendants’ withdrawal of the Motion.

Defendants and Plaintiff are currently conferencing on whether the parties' can agree to stay this action and proceed to arbitration. If agreement cannot be reached, Defendants intend to file a motion to dismiss on 12(b)(1) grounds that would supersede the Motion. The jurisdictional challenge in the Motion was based on Defendants' position that the parties' dispute did not involve the purchase or sale of any securities. If the parties do not agree to arbitration,

Defendants will urge dismissal under 12(b)(1) on the grounds that an arbitration clause governs the parties' dispute and deprives the Court of subject matter jurisdiction. This jurisdictional challenge supersedes the previous one because, if granted, the Court would not have jurisdiction to decide the question whether Plaintiff's claims involve the purchase or sale of securities.

Respectfully submitted,

**JACKSON WALKER L.L.P.**

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By: /s/ Jason Rodgers

Jason Rodgers

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State Bar No. 24088144

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

This is to certify that on this 5<sup>th</sup> day of December, 2018, a true and correct copy of the foregoing was served electronically upon all parties receiving notice via the Court's ECF/PACER system.

/s/ Jason Rodgers

Jason Rodgers